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February 9, 2012

MAGISTRATE JUDGE
A. KATHLEEN TOMLINSON
100 Federal Plaza, Courtroom 910
Central Islip, NY 11722-9014
Chambers: (631) 712-5760 Fax: (631) 712-5766

Re: Genometrica Research Inc., v. Boris Gorbovitski, Vera Gorbovitski
a/k/a Vera Gorfinkel, and Advanced Biomedical Machines, Inc.
USDC:EDNY Case Cv-11-5802 (ADS)(AKT)

Dear Judge Tomlinson:

This will serve as defendant's opposition to the letter application of the plaintiffs.

Background

We are scheduled to appear for Joint Pretrial Procedures before Your Honor on March 9th. A pending motion to dismiss under Fed. R. Civ. P. 12(b) (6) was timely served and filed within 21 days of service of the summons and complaint. Rather than oppose the dismissal on the merits, plaintiffs sought and obtained a 60 day extension directly from Judge Spatt which was granted.

At the core of the Fed. R. Civ. P. 12(b) (6) dismissal motion is defendants' proof therein that the Court lacks subject matter jurisdiction of the claims asserted.

Of the sixteen (16) claims, thirteen are clearly enumerated (4th through 16th) by plaintiff as nonfederal and solely state based. The three remaining, the First, Second and Third Claims allege Trade Mark Violations, when in fact no evidence is presented in the complaint of the existence of any alleged trade- marks.

A memorandum of Law has been provided in support of the motion to dismiss under Fed. R. Civ. P. 12(b) (6) that in the absence of establishing the basis of subject matter jurisdiction, this complaint must fail.

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Discussion

Defendants respectfully submit that a highly useful purpose would be served by conducting the Joint Pre-Trial Conference now scheduled for March 9th. We oppose any adjournment thereof.

As Your Honor notes in Points 1 (3) (4) of the:

“Procedures in Cases before Magistrate Judge Tomlinson for All Purposes”
A. *Joint Pretrial Orders*

“3. a brief statement by plaintiff as to the basis of subject matter jurisdiction, and a brief statement by each other party as to the presence or absence of subject matter jurisdiction. Such statements shall include citations to all statutes relied on and relevant facts as to citizenship and jurisdictional amount;

“4. a brief summary by each party of the claims and defenses that party has asserted which remain to be tried, without recital of evidentiary matter, but including citations to all statutes on which the party is relying. The parties shall also list all claims and defenses previously asserted that are not to be tried;”

Plaintiff's appearance before this Court on March 9th would provide the Court with a writing providing the court with the basis of subject matter jurisdiction. The complaint as presently pleaded is challenged by a Fed. R. Civ. P. 12(b) (6) dismissal motion.

A request for further delay by the plaintiff in answering to jurisdiction is prejudicial.

For purposes of judicial economy, this is the first issue normally addressed in any federal case and is a proper subject for resolution on March 9, 2012.

Respectfully submitted,


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